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14 SYSTEMS, INC.

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16 **UNITED STATES DISTRICT COURT**

17 **CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION**

18
19 **CREATIVE INTEGRATED**
20 **SYSTEMS, INC.,**

21 **Plaintiff,**

22 **v.**

23 **NINTENDO OF AMERICA INC.;**

24 **NINTENDO CO., LTD.;**

25 **MACRONIX AMERICA, INC.;**

26 **and MACRONIX**

INTERNATIONAL CO., LTD.,

Defendants.

Case No. 2:10-CV-2735 PA (VBK)

**PLAINTIFF'S MOTION IN LIMINE
TO EXCLUDE TESTIMONY**

Trial: March 4, 2014

Courtroom: 15

Judge: Hon. Percy Anderson

1 Plaintiff Creative Integrated Systems, Inc. (“Creative” or “CIS”) respectfully
2 moves *in limine* to bar testimony that is not based on the personal knowledge of the
3 witness, which is admittedly a “guess,” and which has no evidentiary foundation.
4 See Fed. R. Evid. 602, 801, 802. Defendants want to play the following testimony
5 from Mr. Komarek’s deposition dated December 1, 2010 (emphasis added):

6 05 So Ricoh made the chips that you designed for
7 06 them, the ROM chips, and sold them to Nintendo?

8

9 08 THE WITNESS: Yes.

10 09 BY MR. O’CONNOR:

11 10 Q. And Nintendo put those chips in Nintendo
12 11 products and sold them throughout the world?

13

14 14 THE WITNESS: **That is my guess.**

15 15 BY MR. O’CONNOR:

16 16 Q. Including in the United States?

17

18 20 Q. Is that your understanding -- that it was also
19 21 including in the United States?

20

21 24 THE WITNESS: That was my understanding.

22 No foundation has been laid to demonstrate that Mr. Komarek had reason to
23 know what Nintendo did with the ROM chips or where they were sold. As
24 indicated in the testimony itself, Mr. Komarek’s statements that Nintendo was
25 selling products containing ROM chips “throughout the world” “including in the
26 United States” are all based on an admitted “guess.” This testimony is
27 inadmissible. It is not based on personal knowledge. Fed. R. Evid. 602 (“A witness
28

1 may testify to a matter only if evidence is introduced sufficient to support a finding
2 that the witness has personal knowledge of the matter.”); *see also Carmen v. San*
3 *Francisco Unified School Dist.*, 237 F.3d 1026, 1028 (9th Cir. 2001) (“It is not
4 enough for a witness to tell all she knows; she must know all she tells.”). Nor is
5 there any explanation in the deposition testimony (or outside of it) as to why Mr.
6 Komarek made this guess, save for the possibility that he heard it from some
7 unidentified person. It is thus inadmissible for the additional reason that it is based
8 on hearsay. *See* Fed. R. Evid. 801, 802.
9

10 Dated: March 11, 2014

Respectfully submitted:

11 **BARNES & THORNBURG LLP**

12 By: /s/ Jeff M. Barron _____
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14 Attorneys for Plaintiff Creative Integrated
15 Systems, Inc.
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